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ABSTRACT

This magazine is designed to help high school teachers of civics, government, history, law, and law-related education program developers educate students about legal issues. This issue focuses on immigration law and the American Dream. It includes 11 articles: (1) "U.S. Immigration Policy and Globalization" (P. Martin; S. Martin) explains how the United States faces new challenges and why the country must begin to think more creatively about immigration; (2) "Immigration after World War II, 1945-98" (L. Dinnerstein; D. M. Reimers) discusses the changing policies of a postwar United States which led to increased levels of immigration; (3) "The Changing Face of Immigration Law" (C. Nugent) investigates how the United States, and, therefore, its law, has a history of ambivalence toward immigration; (4) "Lawyers in Action: Arizona's Florence Project" (E. Dallam) shows how a legal team makes a difference for detainees at a detention center in the desert; (5) "Perspectives" (S. Robertson; M. Camerini) offers two film producers' perspectives as they filmed a movie on asylum and refugee protection in the United States; (6) "Students in Action" helps young people explore immigration issues that will be debated by their generation, including rights of detainees, asylum seekers, and juvenile refugees; (7) "Learning Gateways" (M. Fisher) introduces classes to the reality of today's immigration practices and policies; (8) "Supreme Court Roundup" (C. F. Williams) discusses the Court's activity during the current term, highlighting several federalism and First Amendment cases: (9) "News from Capitol Hill" outlines the 107th Congressional legislation to control junk mail, lower taxes, and reform campaign finance; (10) "Teaching with the News" (W. B. Lewis; C. F. Williams) looks at what the Fourth Amendment meant to the founders and what it means today; and (11) "Media Specialist's Corner" (M. Kayaian) identifies Web sites for students seeking primary documents related to immigration law. (BT)

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INSIGHTS

ON LAW & SOCIETY

A magazine for teachers of civics, government, history & law

Immigration Law & the American Dream

SO 033 796

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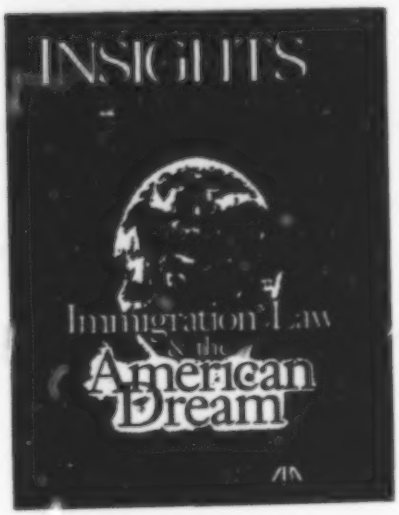

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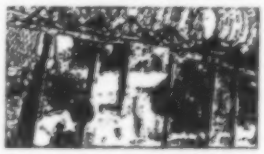

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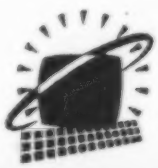
SPECIAL FEATURE:

Desert Heats Up as Lawyers Take Action

Learn how lawyers are helping immigrant detainees through a pro bono program at an Arizona detention center (page 13).

For more about law careers in immigration, visit www.abanet.org/publiced/youth/sia



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Come online to learn how you can make this edition a vital part of your classroom instruction on immigration (click "Editor's Note").

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Immigration Law & the American Dream

U.S. Immigration Policy and Globalization

The United States faces new challenges and must begin to think more creatively about immigration.

by Philip Martin and Susan Martin

On a normal day, some 70,000 foreigners arrive in the United States. Most are welcomed at airports and borders: more than 60,000 come to the United States as tourists, business visitors, students, and foreign workers. Another 2,500 arrivals are immigrants and refugees, persons that the United States has invited to join American society as permanent residents. Finally, there are about 5,000 unauthorized aliens. About 4,000 are apprehended every day, most along the U.S.-Mexican border just after entry, but at least 1,000 elude detection at the border or slip from legal to unlawful status after legal entry, as when a tourist goes to work.

Despite the generally rosy view of America as a land of immigrants, the arrival each day of the equivalent of a small city has become a contentious policy reflecting basic ambivalence about current immigration. Immigration often becomes an issue in which the loudest voices sometimes come from the extremes of *no immigrants* and *no borders*. Yet there are middle-of-the-road remedies for immigration problems. We argue that a better understanding of the facts promotes fine-tuning rather than radical changes in immigration policy. That understanding begins with an analysis of the global contexts in which decisions on U.S. immigration policy are taken.

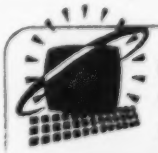
"[A] better understanding of the facts promotes fine-tuning rather than radical changes in immigration policy."

Global Contexts

Economic Trends Corporations are using contingent labor and contracting out assignments at an unprecedented rate. In manufacturing, it is not unusual for components of a single product to be made in several different countries. The growth in multinational corporations puts pressure on governments to facilitate the inter-country movements of personnel. At the same time, and in a much more disturbing trend, alien smuggling has emerged as a multinational corporate activity that reaps an estimated gain of $5 billion to $7 billion per year. Such regional and international trade regimes as NAFTA and the General Agreement on Trade and Services (GATS) also affect migration trends, permitting freer movement of persons providing international services from signatory countries. Further, the development

Philip Martin is professor of agricultural and resource economics at the University of California-Davis and chair of the University of California's Comparative Immigration and Integration Program. Susan Martin is the Director of the Institute for the Study of International Migration in the Walsh School of Foreign Service at Georgetown University in Washington, D.C.

Reprinted, with changes, from Philip Martin and Susan Martin, "The Politics of Globalization in Germany and U.S. Immigration Policy," in Responses to Globalization in Germany and the United States: Seven Sectors Compared, *ed. Carl Lankowski (Washington, D.C.: AIGS, 1999), by permission of the publisher.*



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of new technologies facilitate both virtual and actual migration of people, ideas and work and, at least in the information technology field, creates a seemingly insatiable demand for infusion of foreign professionals with state-of-the-art skills.

Post–Cold War Events The times present new opportunities as well as new challenges for migration regimes, particularly regarding refugee movements. While many refugee situations have been resolved as Cold War–inspired conflicts came to an end, rabid nationalism and government collapse continue to cause massive flight. At the same time, the principles of asylum and *non-refoulement* (non-return to places of persecution) appear to be under growing attacks in Europe and North America. In a new trend, however, governments appear more willing to intervene in countries of origin to resolve crises that generate refugee flight and provide humanitarian assistance and protection to the victims of conflict and repression.

Transnationalism Partly because of the technological revolution discussed above, migrants can far more easily today live in two societies at the same time, maintaining contacts with their home communities very inexpensively. Maintaining the flow of money between immigrants and those who remain at home can be an important consideration in immigration policy-making. For example, the United States granted Temporary Protected Status to Hondurans and Nicaraguans in order to encourage migrants from these countries to continue to send remittances to the victims of Hurricane Mitch.

Perhaps the most visible aspect of transnationalism is the growing acceptance of dual nationality. Several major emigration countries, including the largest source of immigration to the United States—Mexico—have shifted from opposition to dual nationality to active support for it. Although there is debate about the implications of the trend toward dual nationality among academic researchers, the U.S. public has not yet focused on this emerging issue.

Given these significant global trends, the United States faces new challenges and must begin to think more creatively about its immigration policies. In the following sections, we set out issues in six principal areas that need attention.

Legal Immigration

Permanent Immigrants are persons who are entitled to live and work permanently in the United States and, after five years, to become naturalized U.S. citizens. The four principal bases or doors for admission are family reunification, skills, diversity, and humanitarian interests.

While the debate about overall admissions is often framed in pro- and anti-immigration terms, the reality is different. Immigration can be more effectively seen as a series of trade-offs between competing goods. In fact, many of those concerned about immigration are more concerned about the composition of the flow than the number of immigrants. During the past twenty years, there have been persistent calls for a shifting of admission numbers from family categories, under which many immigrants with less than a high school education enter, to skills-based ones that attract more highly educated immigrants. In particular, reformists propose limiting immigration to nuclear family only. Proponents of extended family migration counter that admission of extended family serves not only humanitarian purposes but economic ones as well. Extended families often work or live together, strengthening the household economy of members who would otherwise live in poverty.

Temporary Temporary work categories are increasingly important as the vehicle for admission of foreign workers, particularly professionals, executives, and managers.

As with other immigration matters, there are trade-offs in using temporary admission categories. While they may help increase business productivity and even generate job growth, they also render the foreign workers more vulnerable to exploitation and may, thereby, depress wages and undermine working conditions for U.S. workers.

The trade-offs are even more apparent with regard to admission of unskilled workers. About two-thirds of the 2.5 million hired farm workers are immigrants. If they were not available, hourly farm worker earnings, which averaged $5–$6 per hour in the mid-1990s, might rise by 50 percent, to $7.50–$9 per hour. For a typical consumer unit, a 50 percent increase in farm worker wages would increase annual spending on fresh fruits and vegetables by $10, or from $270 to $280. Are the savings on

Part of a massive flight at the end of the Cold War, this Romanian family is jailed after illegally entering Germany from the Czech Republic.

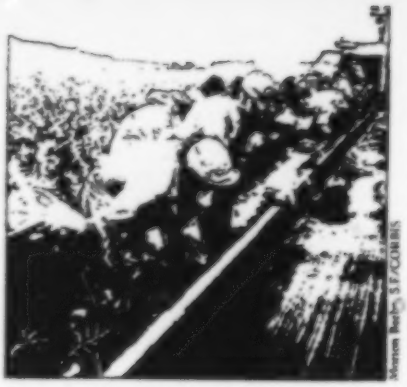
fresh produce due to immigration worthwhile? The critical issues are which of the two goods is more valuable—cheaper food or higher farm wages—and what time frame should be used in assessing impacts—today or some time in the future.

Refugees and Asylees

The United States remains one of the major countries offering permanent resettlement to refugees in third countries as well as asylum to those arriving directly. In the United States, asylum applicants may apply directly to the Immigration and Naturalization Service (INS) (called affirmative applications) or during a removal hearing in immigration court when apprehended at a port of entry or in the interior of the United States (called defensive applications). In the case of affirmative cases, INS may grant asylum or refer the case to an immigration judge for further adjudication. Although there are no limits on the number of persons who can obtain asylum (with the exception of those applying under a special program for Chinese protesting China's coercive population control policies), the United States permits a maximum of 10,000 asylees to adjust to permanent residents each year.

Unauthorized Migration

The United States has tried a number of measures to reduce illegal immigration but has not yet found an effective formula for reducing unauthorized entry and employment. Two extremes mark the ends of the control spectrum. At the one end are so-called island strategies, in which control efforts are focused on borders and ports of entry, and there is little enforcement inside the country. At the other extreme are the continental strategies that evolved in western Europe, in which border controls are buttressed by internal residence and work permit systems.



Temporarily admitting immigrant farm laborers keeps hourly wages from rising up to 50 percent in the United States.

The United States abandoned the pure island model in 1986, when the Immigration Reform and Control Act for the first time made it unlawful for U.S. employers to knowingly hire illegal foreign workers. However, employer sanctions did not deter illegal entries and employment. External controls still dominate.

Integrating Immigrants

The United States has tended to have explicit policies regarding *immigration* but a laissez-faire attitude regarding *immigrants*. Family, ethnic organizations, religious institutions, and other private sector groups have the principal responsibility to help immigrants after arrival. Except for refugees, there are few federal programs that target newly arrived immigrants for assistance.

Four issues highlight the U.S. debate on immigrant integration: economic integration, English language acquisition, eligibility for public-financed programs, and naturalization. In each case, extremes may dominate the debate, particularly during periods of economic decline, but the actual experience is far more complex.

Administration of Immigration Programs

In the United States, the Immigration and Naturalization Service, a part of the Justice Department, has the responsibility for regulating admissions and enforcing laws aimed at deterring and removing unauthorized foreigners. The U.S. Commission on Immigration Reform (CIR) identified four major components to the U.S. immigration system: border and interior enforcement, immigration services and visas, workplace labor standards, and an appeals process. The CIR and other analysts have concluded that the INS has been asked to do too much, and that its enforcement mission often conflicts with its service mission.

A second major issue involves the roles of the federal government versus state and local governments. The U.S. Supreme Court has declared that the "power to regulate immigration is unquestionably exclusively a federal power." Yet the 1996 welfare reform authorized states to determine whether and which public benefit programs would be available to legal immigrants. the Illegal Immigration Reform and Immigration Responsibility Act (IIRAIRA) also included provisions devolving respon-

continued on page 31

For Discussion

What are some global contexts that should be considered when formulating immigration policy?

What are four bases for allowing immigrants to enter as permanent legal residents? What trade-offs are there in using temporary work admissions standards?

What types of measures does the United States use to limit unauthorized immigration?

Immigration After World War II, 1945-98

The changing policies of postwar America have led to increased levels of immigration.

by Leonard Dinnerstein and David M. Reimers

When World War II ended in 1945, the Daughters of the American Revolution, the American Legion, the Veterans of Foreign Wars, and several other patriotic groups called for a ban on immigration for five to ten years. However, Congress passed legislation to bring 205,000 displaced Europeans to our shores within three years; added to that figure in 1950; and continued to increase the numbers of immigration permits, rather than restrict them, during the next four decades. Despite the narrow McCarran-Walter Immigration Act, which essentially reiterated American beliefs in the 1924 policies established by the Johnson-Reed Act, special legislation to aid individual groups in dire circumstances characterizes the Congresses of the past five decades.

"[Special immigration] legislation to aid individual groups in dire circumstances characterizes the Congresses of the past five decades."

Decline of Prejudice

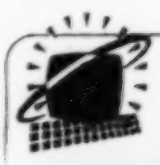
But before legislation could be passed, the temper of the country had to change. While decreasing anti-Semitism and anti-Catholicism were essential for the enactment of new immigration legislation, the laws, which made possible the admission of many Asians and blacks from the Caribbean, would not have been possible without a decline in racial prejudice. While Chinese and Japanese immigrants had been scorned and were the first ethnic groups to be banned, they found growing acceptance in post–World War II America. Educational and employment opportunities began to open up for their children, and, by the middle of the 1960s, many state legislatures had outlawed racial discrimination.

The abatement of ethnic conflict and the general prosperity of post–World War II America created a climate suitable for the modification of the severe immigration acts. First, Congress opened the doors to the families of GIs by passing the War Brides Act of 1945, which enabled 120,000 wives, husbands, and children of members of the armed forces to immigrate to the United States. Then it turned its attention to refugees.

As a first step in alleviating the problem, President Truman issued a directive on December 22, 1945, requiring that, within existing laws, American consulates give preference to displaced persons in Europe. About 40,000 people benefited from this order before Congress abrogated it with the passage of the Displaced Persons (DP) Act of 1948. The legislation resulted from intensive lobbying on

Reprinted, with changes, from Leonard Dinnerstein and David Reimers, Ethnic Americans: A History of Immigration, *4th ed. (New York: Columbia University Press, 1999), 97-125, by permission of the publisher.*

Leonard Dinnerstein is a professor of history and director of the Program in Jewish Studies at the University of Arizona in Tucson. David M. Reimers is a professor of history, emeritus, at New York University.



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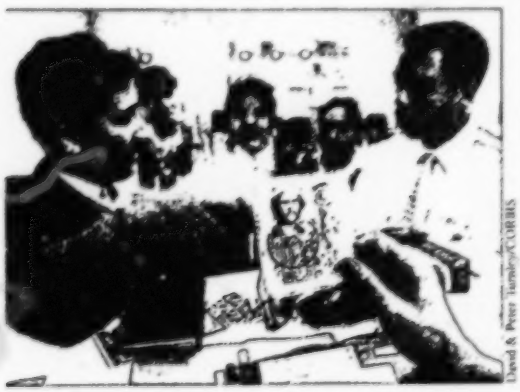
the part of a newly formed Citizens Committee on Displaced Persons, which emphasized that 80 percent of the displaced persons were Christian. The DP Act won approval only after it had been mutilated by opponents of a liberal immigration policy. It was worded to favor agriculturists, exiles from the Baltic states, and those of Germanic origin. President Truman signed the bill reluctantly, denouncing the provisions that, as he put it, discriminated "in callous fashion against displaced persons of the Jewish faith." In 1950, after most of the Jewish refugees had gone to Israel, Congress amended the 1948 act and eliminated the offensive stipulations. Ultimately, about 400,000 people arrived in the United States as a result of the DP laws.



David & Peter Turnley/CORBIS

Customs agents question an undocumented alien who has arrived in New York City.

Postwar Refugees

These acts only scratched the surface of the immigration problem. Postwar dislocations and the onset of the Cold War exacerbated the difficulties of readjustment, and millions more still sought entry into the United States. To cope with the needs of these people, as well as to contain the voices of their friends and relatives in the United States who wanted immigration policies liberalized, in 1947, both houses of Congress established a committee to look into the questions.

While rejecting theories of Nordic supremacy, the committee held, nonetheless, "that the peoples who made the greatest contribution to the development of this country were fully justified in determining that the country was no longer a field for further colonization and, henceforth, further immigration would not only be restricted but directed to admit immigrants considered to be more readily assimilable because of the similarity of their background to those of the principal components of our population."

The proposed legislation became the McCarran-Walter Immigration Act of 1952. It maintained the national origins system and strengthened security procedures.

The McCarran-Walter Act liberalized immigration in one area: it repealed the ban on Asian citizenship and granted nations in the Far East minimum annual quotas of 100 each.

The removal of some restrictions against Asians did not mean the end of racism in immigration policy, for the 1952 act contained other discriminatory provisions. Those of European background born in the Western Hemisphere were eligible to come from their nations of birth, but Asians in similar circumstances were not. People with one Asian parent were charged to that parent's home country.

The McCarran-Walter Act also set a quota of 100 for several of the West Indian nations. President Truman, who favored broadening immigration laws and eliminating these provisions and the offensive national origins quotas, vetoed the bill, but Congress overrode his veto.

Within a year after the McCarran-Walter Act had become law, efforts were made to modify it. President Eisenhower wanted to admit more refugees, and, in 1953, when the Displaced Persons Act expired, Congress enacted the Refugee Relief Act, which admitted another 200,000 Europeans and a few hundred Asians. Passed at the height of the Cold War, the measure was meant to aid refugees as well as escapees from communist-dominated areas.

After the abortive Hungarian Revolution of 1956, Congress passed a law that admitted another 29,000 refugees, chiefly Hungarians, but including Yugoslavians and Chinese. Some 31,000 Dutch Indonesians, another uprooted group, came in under a law passed the next year. The United Nations declared 1960 World Refugee Year and Congress responded with the Fair Share Law, which opened the doors of this country for more immigrants.

In addition to congressional actions, Presidents Dwight D. Eisenhower, John F. Kennedy, and Lyndon B. Johnson used the executive powers they possessed under the existing immigration laws to relax restrictions. Thus, 30,000 refugees entered after the 1956 Hungarian Revolution as parolees without visas, ineligible for permanent alien registration until Congress made them eligible. President Kennedy ordered the admission of thousands more, especially the Hong Kong Chinese and Cubans who sought refuge after Fidel Castro's seizure of power in 1959.

Additions to the basic immigration law made it possible for many to come who did not qualify under the quota system. In the early 1960s, most immigrants were of this sort. By then, the political climate was more conducive to immigration reform and not piecemeal action.

Following extensive hearings, a new immigration bill passed overwhelmingly in 1965. Designed to be fully effective

in 1968, the act abolished the national origins quota system and made other modifications in immigration policy.

Although the national origins proviso disappeared, an overall limitation remained. Only 170,000 people, excluding parents, spouses, and minor children of American citizens, were allowed to enter the United States from outside the Western Hemisphere. No nation in the Eastern Hemisphere was permitted to have more than 20,000 of this total, although immediate relatives were not counted. The United States still had a selective policy for immigrants, but now Congress put in place a preference system that favored family unification, occupational skills, and refugee status. Seventy-four percent of the slots were reserved for family members. Occupational visas accounted for 20 percent of the 1965 law's categories, and refugees received the smallest allotment.

Liberalization of the law for Asians and Europeans accompanied a shift in policy toward Canadians and Latin Americans. In the 1965 law, Congress placed a limit—120,000—on immigration from the Western Hemisphere (immediate family members of U.S. citizens were exempt from the limit). The Johnson administration had not pressed for this restriction, but a majority in Congress feared the possibility of a massive increase in Latinos, especially Mexicans. The limitations were modified to admit Cuban refugees. Western Hemispheric immigration increased after 1965 and the Latino presence in the United States became more pronounced.

In the 1970s, Congress added to the reforms begun in 1965 and shaped a worldwide uniform immigration policy. In 1976, Congress created a preference system for the Western Hemisphere and placed a 20,000 limit on all its nations, excluding immediate relatives of American citizens.

Whereas Mexico had previously taken up about a third of the Western Hemisphere's overall quota, now other nations could increase their share. In 1978, Congress completed the reforms begun in 1965 when it created a worldwide ceiling of 290,000 quota places annually (not counting immediate family members of U.S. citizens) by combining the Western and Eastern Hemisphere totals; it also established a uniform preference system for all nations. This system reiterated clauses from the 1965 act that emphasized family unification, occupation, and refugees.

Congress also passed several other immigration acts after 1978. The Refugee Act of 1980 provided a regular system for refugee admissions and stipulated that the "normal flow" of refugees should be 50,000 annually. But like other limits on immigration, that number could be, and usually was, exceeded. In 1986, legislators gave amnesty to nearly 3 million illegal aliens and, finally in 1990, passed a law that increased immigration another 35 percent.

Increased Immigration

The changing policies of postwar America led to an increase in immigration compared with the rate during the lean depression years. Whereas only 528,000 people arrived in the 1930s and 120,000 during World War II, the numbers grew substantially after 1945. In 1978, they passed 600,000; they were averaging 600,000 annually in the 1980s. During the 1990s, immigration reached an all-time high for a decade, with over 10 million people arriving from foreign lands. These figures do not include an estimated 275,000 undocumented immigrants arriving annually. The large increases in immigration meant that the proportion of the United States population that was foreign born also increased. Only 4.8 percent of Americans had been born abroad in 1970, but that figure increased to 9.3 percent in 1996. This was the highest percentage of immigrants in our population since 1930.

Nathan Benn/CORBIS

Seeking asylum in the United States, Haitian "boat people" enter the harbor in Key Biscayne, Fla. This boat was followed into the harbor by a boat carrying sheriff department members.

FOR DISCUSSION

What general trends have occurred in immigration to the United States since the end of World War II?

What had to occur in order for immigration legislation to be passed?

What has been the effect of immigration on the U.S. population?

The Changing Face of Immigration Law

The United States—and therefore its law—has a history of ambivalence toward immigration.

by Christopher Nugent

The United States is a nation of people who came from somewhere else. Over fifty million newcomers have been introduced to the United States since the early nineteenth century—the largest international transfer of population in modern history. Currently, more than one in every five U.S. residents today is either foreign-born or the American-born offspring of an immigrant. Yet historically the country has been ambivalent in its response to immigrants with regard to both their legal rights and responsibilities as potential citizens and the questions of whether they strengthen or weaken the nation. Our laws and social history reflect this ambivalence.

People who are not citizens must meet specified requirements set out by law in order to enter or remain in the United States. At times the country has extended a warm welcome to almost all persons fleeing persecution or trying to improve their lives. At other times the welcome has been significantly cooler, resulting in the enactment of laws to discourage immigration. The nation is now in the midst of another cold spell, with recent U.S. legislation reflecting a strong anti-immigration movement.

Recent Laws Affecting Immigration

Laws governing immigration have existed almost since the beginning of the nation's history and are based on the U.S. Constitution, which granted Congress the authority to establish a uniform rule of naturalization. For some of the most important benchmarks in the development of immigration laws, go online at insightsmagazine.org and see Table 1.

The U.S. Immigration and Naturalization Service, an agency of the Department of Justice, is responsible for enforcing the laws regulating the admission of foreign-born persons to the United States and for administering various immigration benefits, including the naturalization of new citizens. The recent immigration law, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996, has put more authority in the hands of INS officials than ever before. In addition to tightening controls on illegal immigration, this act also makes it more difficult for legal immigrants to enter or remain in the United States.

INS agents may now arrest, detain, or deport an immigrant if she or he has entered the country without a visa or other immigration document; has entered legally but overstayed the allowed time; or has committed a crime in this country. Deportable offenses now include, but are not limited to, driving under the influence of alcohol, shoplifting, and domestic violence, sometimes even if they were mere misdemeanor convictions.

Christopher Nugent is director of the ABA Immigration Pro Bono Development and Bar Activation Project in Washington, D.C.

"[R]ecent U.S. legislation [reflects] a strong anti-immigration movement."

Check Your Understandings

The following questions address a number of issues that influence attitudes toward immigration and perceptions of immigrants. How would you answer these questions?

- Do most immigrants enter the United States legally?
- Do immigrants take jobs away from Americans?
- On what basis are immigrants admitted to the United States?
- Are today's immigrants assimilating into American society?

For the answers to these questions, visit insightsmagazine.org

For the online text of this article, go to

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One of the 1996 act's most controversial provisions is for the "expedited removal" of persons seeking entry to the United States at the place of arrival. This rule permits an INS agent to summarily deny admission to an immigrant who does not possess the proper documents or whom the officer believes to have fraudulent documents without granting that person the right to a lawyer. Immigrants so removed from airports or the border are banned from returning for five years. The INS agent's decision is not reviewable by any court. Critics of this provision point to cases where a person trying to enter has had a valid visa and nevertheless been deported without the ability to appeal.

Another drastic provision of the 1996 law bars judicial review by the federal courts of deportation orders. However, the majority of circuit court cases have held that immigrants do continue to have access to the courts and have their deportation cases reviewed despite IIRAIRA. The Supreme Court is considering this issue now.

The overall effect of the 1996 Immigration Act (along with the Anti-Terrorism and Effective Death Penalty Act of the same year) has been to increase greatly the number of persons whom the INS must detain or deport. The INS now detains more than 200,000 people annually at more than 900 sites, the majority of which are county and local jails. Immigration detainees have become the fastest growing segment of the incarcerated population in the United States. The INS currently budgets approximately one billion dollars for their detention and removal.

On November 13, 2000, after more than four years in development, the INS announced the promulgation of detention standards to benefit its burgeoning population of detainees. The 36 standards are comprehensive, encompassing areas from legal access to religious and medical services; marriage requests to recreation. The ABA was instrumental in developing four standards for legal access in the area of visitation by lawyers and family members and friends, detainee access to legal materials, telephone access to make free phone calls for legal assistance; and group presentations on legal matters.

Many detainees are asylum seekers seeking the shelter of our country but are instead incarcerated, often far from families, friends, and legal resources. Without the right to government-appointed counsel, a record 90 percent of detainees, including asylum seekers, go unrepresented in their claims for relief from removal. A Georgetown analysis of Justice Department data found that applicants who secure a lawyer win asylum more than six times as often as those who do not. Having a lawyer is what makes a difference between opening the door to freedom and safety and deportation to an uncertain fate.

According to a different study by Robert L. Bach of the State University of New York at Binghamton, poor immigrants indeed have greater unmet legal needs than do poor American citizens. Moreover, confronted with a system and language that are unfamiliar, applicants without some form of legal representation face nearly insurmountable odds in making their cases. Legal Services Corporation (LSC) funding is not available to most persons seeking legal status in the United States because Congress, initially under the Reagan Administration and again in 1996, has attached riders to the appropriations bill stating that such funding cannot be used to assist them. At the same time, much evidence suggests that withholding such services neither results in immigrants' being sent home nor prevents them from coming here.

While immigration and citizenship are primarily federal matters, the states have independent authority in certain instances involving immigrants. For example, both federal and state employment and anti-discrimination laws protect immigrants from employment discrimination based on "national origin." States have nevertheless passed laws to exclude noncitizens from specified civil public employment (as teachers and police officers, for example), although they have not been allowed to block permanent residents from other occupations—notably that of lawyer.

Two other pieces of legislation passed in 1996 have affected the status of immigrants. The Personal Responsibility and Work Opportunity Reconciliation Act (better known as the "welfare reform" act) restricts the eligibility of legal immigrants for most federal benefit programs and allows states to eliminate immigrant eligibility for their benefit

Illustration by Tony Gill

programs. However, benefits for the very young, the very old, and the disabled have since been restored.

The Anti-Terrorism and Effective Death Penalty Act of 1996 also expanded the list of crimes that provide grounds for deportation and called for jailing legal permanent residents and other noncitizens who have criminal offenses on their records. This has led to the regime of mandatory detention where people are detained by INS for the entirety of their immigration proceedings without the ability to seek release on bond. While many federal courts have found mandatory detention to be unconstitutional, the Supreme Court has yet to rule on the practice.

Ted Fitzgerald/Boston Herald/Corbis Sygma

The Child Citizenship Act of 2000 grants American citizenship to almost 75,000 adoptees such as this girl celebrating at her citizenship ceremony.

In its last session in 2000, Congress failed to enact any legislation that would roll back the controversial provisions in the 1996 laws that have caused detention to boom. Congress did, however, pass the Legal Immigration and Family Equity Act (LIFE Act), which President Clinton signed into law on Dec. 22, 2000. The LIFE law now offers limited opportunities for several hundred thousand people without valid immigration status to legalize their status in the United States through petitions by their family members or employers. It also has limited immigration possibilities for other special groups. LIFE, however, is far from a blanket amnesty program to legalize all or even most undocumented residents in the United States.

Immigrants in the Legal System

The American legal system is the immigrant's gateway to full membership in American society, yet nearly every aspect of the legal system presents challenges to immigrants. Some have a long-standing and, in many cases, culturally grounded mistrust of government, with no concept of individual rights as we understand them in the United States.

Juries are not used in most countries, and newcomers are likely to consider a court-appointed lawyer to be an instrument of the government who is not in the least concerned about promoting a defendant's interests—except, perhaps, to plead for mercy. This view of the role of defense lawyers may lead to suspicion of court-appointed lawyers and the public defender system in the United States, making it difficult for lawyers to be effective advocates for immigrant clients. Yet newcomers to the United States are often in great need of legal assistance, since they are frequently victimized by discrimination in housing, schools, and the workplace, where unscrupulous employers may capitalize on their vulnerabilities.

The pro bono (free) work of lawyers plays a large role in ensuring that immigrants have equal access to our justice system. These lawyers may assist in any numbers of services, from helping immigrants work through an incomprehensible pile of citizenship-related paperwork to preventing a miscarriage of justice when an immigrant has been falsely accused of a crime.

Whatever their origins and circumstances, today's immigrants are a growing and permanent feature of America's landscape. These new Americans are dramatically changing out neighborhoods, our cities, and the future of our society. Our nation's constitutional protections of due process and equal protection under the law provide the framework by which the rights of immigrants can, and should, be protected.

Bibliography

Bach, Robert L. *Becoming American, Seeking Justice: The Immigrants' Legal Needs Study*. Binghamton: State University of New York, 1996. Funded by the Ford Foundation.

FOR DISCUSSION

Why has the number of people detained by the INS increased significantly in recent years?

What is the "expedited removal" by the INS of a person seeking entry into the United States, and why is this authority granted to the INS controversial?

What would be reasons—both valid and invalid—for restricting immigration?

Arizona's Florence Project

Lawyers in Action

By Elizabeth Dallam

Every day, more than 18,000 people are held in detention centers nationwide while they await removal proceedings. Because detainees have no right to government-appointed counsel, they must often navigate through complex immigration proceedings alone. And, most detention sites are located far from metropolitan centers, making it difficult for lawyers to provide legal services. The result is that 90 percent of those detained lack counsel.

David & Peter Turnley/CORBIS

A customs agent detains illegal immigrants near the U.S.-Mexico border.

To help individuals detained in Florence, a Phoenix law firm established the Florence Immigrant and Refugee Rights Project in 1989. Each year, lawyers assist over 3,000 individuals. The project provides rights presentations that explain the court process and remedies to deportation as well as individual case assessments.

The project also provides services to individuals at the Eloy detention center. Because of its limited legal staff, the project tries to empower individuals to represent themselves when seeking discretionary waivers of criminal convictions. Recognizing that this empowerment model has limitations, the project launched a pro bono referral program to recruit private lawyers to help those who lack the sophistication to represent themselves.

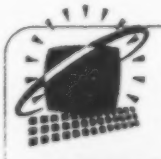
The project also offers legal services to detained children who do not have guardians *ad litem* or government-appointed counsel, and it is developing a national model for delivering legal services to INS-detained children.

After immigration laws were changed in 1996 so that legal permanent residents can be deported for committing certain nonviolent offenses, the project began an education campaign to inform immigrant communities of the consequences of criminal conduct and their rights when arrested.

The Florence Project has also played an important national role by advocating for federal funding of legal assistance to detainees and has developed extensive pro se "Know Your Rights" materials for those who do not have a lawyer.

Finally, the project has established a Detention Watch Network, a coalition of groups working in detention sites across the country. Members share models of legal service delivery, and work together to change immigration law.

The Florence Project has been working for 11 years to help immigrants across the country and will undoubtedly continue to play an important role as a national model for legal service delivery in the future.



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FOR DISCUSSION

According to the author, why has the Florence Project been successful in helping immigrants?

If you worked for the Florence Project, what other initiatives would you recommend to help immigrants in Arizona and throughout the nation?

Elizabeth Dallam is the interim executive director of the Florence Immigrant and Refugee Rights Project in Florence, Ariz.

Two producers offer the perspectives they developed as they filmed a movie on asylum and refugee protection in the United States.

PERSPE

Well-Founded Fear

by Shari Robertson and Michael Camerini

Documentary filmmakers are always looking for situations where the real-life drama is even more cinematic than a movie. Once we discovered the long white hallways of the U.S. Immigration and Naturalization Service Asylum Office, we knew we had found that kind of situation.

To get a quick sense of the place, imagine that your life has fallen apart—you've lost every material possession, you've been tortured or seriously hurt, or maybe you've gotten out just in time. You've said goodbye to the people you love, and all you have left is the barest possibility of a new start in a strange new place in relative safety. Your papers have been submitted; your file is being processed. Now you enter a small, fluorescent-lit office where you will have one hour to tell your story to a bureaucrat. Two weeks later you'll return to pick up a paper. This page will tell you your fate.

Now imagine yourself on the other side of the desk in the small, bright office. You're a U.S. citizen with a good, steady job. You come to work every morning, walk out into the waiting room, and call someone's name—a name randomly assigned to you, a name from any one of a hundred countries. Each name comes to tell you a story. You've listened to blood-curdling details, you've seen fear and confusion, and you've heard many lies. In the afternoon you have an additional 90 minutes to research and write a defense of your decisions. Your job is to convince your supervisor that each person deserves either to stay here in safety or to be deported. There is no in between.

In a nutshell, that is the Asylum Office. It is a set where the USA meets the rest of the world several hundred times a day. Our documentary film, *Well-Founded Fear*, takes viewers behind the electronic doors on this "set" and into the dramatic real-life stage where American ideals about human rights collide with the realities of a huge embattled bureaucracy. The film's title is drawn from the international treaty definition of a refugee, someone who is afraid or unwilling to return home because of a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion."

Shari Robertson and Michael Camerini

One of the extraordinary things about the Asylum Office is its endless stream of personalities and stories. In the film, you meet a number of them—a Chinese poet who cannot stop reciting his poems even though he has been tortured and imprisoned; a young Algerian woman who had to flee her country to escape death threats because she dressed in Western skirts; a Rumanian man who was beaten unconscious for his political activism; and a Salvadoran mother who escaped her homeland during the 1980s after family members were murdered,

Shari Robertson and Michael Camerini have made documentaries involving politics and cultural issues all over the world. They collaborated in producing **These Girls Are Missing,** *the heartbreaking truth about why little girls don't go to school in Africa, and in 2000 made* Well-Founded Fear *through their New York production company. Learn more about Robertson and Camerini and their projects at wellfoundedfear.org and www.pbs.org/pov (click Behind the Lens).*

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C T I V E S

only to remain trapped in limbo here as her asylum claim languishes for years.

Some of the asylum officers are just as memorable—Kevin, the young ex-Marine who started his job as a "humanitarian" but now, wrestling daily to separate the embellishments of frightened applicants from the manipulative testimony of others, finds himself becoming skeptical; Martha-Louise, who in a previous career was an attorney representing asylum applicants on the other side of the desk; Jim, the former refugee advocate who "burned out"; and Gerald, whose wry humor hides a steel-trap ability to adjudicate.

[T]he Asylum Office ... is where the USA meets the rest of the world several hundred times a day.

We produced our film with the hope that it would provoke discussion, disagreement, and maybe even new ideas or insights—because we believe the ideal embodied in asylum matters greatly to who we are as Americans. How we deal with others in need reveals fundamental truths about ourselves and cuts to the core of our commitment to human rights. As an institution, asylum turns the spotlight back on us.

Classroom Aids

Since its debut at the Sundance Film Festival 2000 and its television broadcast on PBS's "P.O.V.," *Well-Founded Fear* has been used in middle school, high school, university, and law school classes and by civic, faith-based, and advocacy groups and NGOs throughout North America and Europe. An excerpted one-hour version has been broadcast worldwide by CNN International.

A new set of six 12–15 minute modules based on individual asylum cases, accompanied by a discussion guide and intended for classroom and small group use, is currently in production for release in summer 2001.

For free download, an extensive Web site at www.pbs.org/pov/wellfoundedfear offers streaming video from other real asylum cases, an interactive exercise entitled "You Be the Asylum Officer," comprehensive background information, discussion guides, and other teaching materials.

For information on how to order a video copy of the program complete with discussion guide and media kit or of the new classroom modules, visit www.wellfoundedfear.org

For the full text of this feature and an online interview with the producers, visit insightsmagazine.org; additional instructional resources are available at www.abanet.org/publiced/povhome.html

David A. Perez Tarsky/CORBIS

A woman carrying a falsified visa is shackled at JFK Airport in New York after trying to enter the United States illegally.

For the online text of this article, go to

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Immigration Law & the American Dream

Students in Acti

Debating the Rights of Detainees, Asylum Seekers, and Juvenile Refugees

In this edition, Students in Action introduces you to the groups of people who are most affected by immigration policies and laws—adult detainees, asylum seekers, and refugee minors. Caught in the complexities of the U.S. judicial system, these people are the ones who most need, and are least likely to receive, legal assistance and protection.

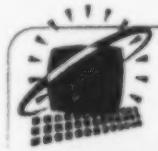
In "Locked Up Tight," Margaret Graham Tebo investigates the situation of detainees—immigrants labeled deportable by the U.S. Immigration and Naturalization Service (INS). They can be held indefinitely, sometimes on the basis of secret evidence. Is detention punishment? Are the detainees entitled to constitutional protections? Are there alternatives to detention? Tebo examines these and other questions.

"Asylum May Be a Matter of Life and Death," says Mary Meg McCarthy, who contends that asylum seekers need all the legal help they can get to meet the required definition of a refugee. She outlines the reasons why being represented by an attorney is crucial for an immigrant seeking political asylum.

In "The Next Gideon?" Siobhan Morrissey notes that children's rights advocates think the Elian Gonzalez case may lead to landmark law for juvenile refugees that parallels *Gideon v. Wainwright*. Just as *Gideon* gave defendants the right to an attorney when facing jail, might the Elian case give rise to a law that requires free legal aid for refugee children? Morrissey also examines other, less optimistic implications of the Elian case for children seeking asylum.

Completing the *Take Action!* activities at the end of each section will help you begin to participate in and influence the public debates surrounding these and other immigration issues your generation will encounter. To do some of these activities and to read about careers in immigration law, get ready to go online to insightsmagazine.org (click "Students in Action" when you get there).

"[A]dult detainees, asylum seekers, and refugee minors … most need, and are least likely to receive, legal assistance."



For the full text of this student feature, visit

insightsmagazine.org

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Locked Up Tight

by Margaret Graham Tebo

In county jails, urban holding cells, and detention yards across the United States, some 3,000 prisoners sit. Waiting. For months. Years. Officially, they are not prisoners but "detainees" —immigrants labeled deportable by the U.S. Immigration and Naturalization Service (INS). Yet they are treated the same as their fellow inmates.

Most detainees have committed immigration no-nos, from overstaying a visa to working without authorization. A few have applied for but been denied political asylum.

All are lost in the limbo known as indefinite detention. These prisoners are being held simply because the United States doesn't have anywhere to deport them. Most are from countries with whom the United States has no official diplomatic relations and therefore no way to ask that the countries take their former citizens back.

The INS insists that it is required by law to hold these detainees until an opportunity to deport them arises, even though there is virtually no prospect for that.

Some detainees don't know why they are being held. Citing national security concerns, the INS holds some detainees on the basis of secret evidence—not even attorneys representing them are privy to the specific allegations.

How can the INS do that? In the wake of the bombings at the World Trade Center in 1993 and the Murrah Federal Building in 1995, Congress passed the Anti-Terrorism and Effective Death Penalty Act of 1996. Its sponsors said the law would prevent immigration by known terrorists and give the INS authority to seek out and deport those it deemed a threat to national security.

The agency was also authorized to use secret evidence to detain and deport suspected terrorists. It could indefinitely detain deportable aliens even when there was virtually no chance their former countries would allow their return.

It is the indefinite detention of some deportable aliens, especially when the allegations against them are kept secret, that has raised the most eyebrows.

At the heart of the dispute is the question of whether detention is punishment. If so, due process considerations should apply. If not, the federal government says, due process can reasonably take a back seat to national security concerns.

The INS says those being held are not being punished, only detained pending deportation. And because detention and deportation proceedings are civil, not criminal, constitutional protections such as due process don't apply—or at least have less influence.

But lawyers and other advocates argue that, to a person being held in jail, whether the charges are civil or criminal is irrelevant.

David Cole, a professor at Georgetown University Law Center who runs an immigration law clinic, says, "There are differences between civil and criminal law, but there's no other proceeding where you're allowed to lock people up indefinitely."

And the practice is even more troubling when the evidence used to detain an immigrant is kept secret. "The most basic principle of due process is that you have to have notice and opportunity to defend," says Cole, who has represented 13 men detained through use of secret evidence.

Members of Congress, moved by stories of detainees and their families, have begun to take notice. In 1999, the Secret Evidence Repeal Act (H.R. 2121) was introduced. It would allow secret evidence only in very limited circumstances, such as in the case of known terrorists. In hearings on Capitol Hill, opponents of secret evidence likened the process to the totalitarian tactics of some of the very regimes that the detainees have fled.

Some defend the INS policy. The Federation for American Immigration Reform (FAIR), a Washington, D.C.-based nonprofit organization, says disclosure of secret evidence risks endangering anti-terrorism efforts. It could endanger the lives of innocent U.S. and foreign citizens, according to FAIR Associate Director David Ray.

Adapted from Margaret Graham Tebo, "Locked Up Tight," ABA Journal (Nov. 2000): 44–51.

The INS defended secret evidence in the same hearings before the House Judiciary Committee. INS general counsel Bo Cooper noted that, of the 300,000 deportation cases the INS brings each year, only 11 open cases involved the use of secret evidence. But advocates of the Secret Evidence Repeal Act say that even one such case is too many.

The biggest question is what this country should do with people who are ineligible to remain here but cannot be sent back to where they came from. The INS says that indefinite detention, while far from ideal, is the only solution provided by law.

Critics note, however, that the INS has the discretion to release detainees pending deportation proceedings or actual deportation, and it often does. When detainees are released, they remain under INS jurisdiction and are restricted in travel, work, and other activities. They can also be detained again at any time at INS discretion.

Why, then, critics ask, should not this type of "parole" apply almost automatically when there is no reasonable hope of actually deporting someone?

Another bill, H.R. 4966, would limit indefinite detention to a maximum of one year. If, after that time, the INS sees no reasonable possibility for deporting the detainee, the detainee is to be released on this sort of parole. There would be built-in exceptions to this requirement for those deemed a flight or crime risk, but the bill would require open review of the evidence of such risk, not secret hearsay. Parolees would not be eligible for government assistance or work permits.

FAIR contends that legal immigration could be banned from countries that refuse to take back aliens found ineligible to stay here. If enough pressure were exerted, it contends, there would be few, if any, indefinite detainees.

Growing pressure about indefinite detention and the use of secret evidence seems to have swung the anti-immigration pendulum away from the hard line of the mid-1990s. Cole sees the shift as inevitable because even Americans who favor less immigration recognize a need for fundamental fairness. Indefinite detention, particularly with the use of secret evidence, flies in the face of due process, he says. It has no place in a free society.

Take Action!

1. Pretend you are a lawyer for a detainee. Explain why holding your client indefinitely is wrong. Then pretend you are a lawyer for the INS. Explain why detaining some aliens is important to national security.

2. Find out what happened to H.R. 2121 and H.R. 4966 (visit thomas.loc.gov for the 1999 term). Have any other bills focusing on the treatment of detainees been discussed or introduced in the present term?

This family is considering entering the United States illegally.

How might doing so harm them? Help them?

Explain your answer. Tell what your advice to them would be.

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Asylum May Be a Matter of Life and Death

by Mary Meg McCarthy

Imagine what it must be like to flee your home, your family, your friends —your country—to escape arbitrary imprisonment, torture, and quite possibly death.

Then imagine that you escape to a new country in search of a new life, only to be detained in jail and subjected to an adversarial court process in an unfamiliar language.

Finally, imagine facing such an ordeal without a lawyer.

That is exactly what happens to most people who flee persecution in their home countries to seek asylum in the United States.

Under both international and U.S. law, an individual is entitled to asylum if he or she meets the definition of a refugee by establishing a "well-founded fear" of persecution based on race, religion, nationality, membership in a social group, or political opinion.

During the legal process of determining whether one meets that definition, many asylum seekers, in addition to being traumatized as a result of their persecution and exile, are experiencing the stresses of detention. Often they don't speak English, nor do they fully understand the process in which they are involved.

Furthermore, most cannot afford a private attorney. On their own, many asylum seekers cannot establish that they meet the legal definition of a refugee. Unable to document their status, 80 percent of asylum applicants are returned to their home country.

That is why the pro bono work of attorneys in representing asylum seekers is so crucial.

The first thing an attorney does to become involved in an asylum case is to contact the local immigrant human rights organization to obtain a prescreened case or to assist with a pending claim. The organization also provides training and can familiarize the attorney with local rules and procedures. This is particularly important because there is a great degree of local discretion on the part of INS officers and immigration judges.

Research on conditions in the client's home country is also important for the attorney to understand why the person fled and needs pro bono assistance.

The next step—interviewing—is critical. It involves learning the client's life story and conveying why flight was necessary. The attorney then assists the client in drafting a personal statement of the asylum claim in the client's own words. The attorney also prepares the asylum application.

After gathering the facts and constructing a narrative, the attorney develops a legal strategy to present to the immigration judge or asylum officer and prepares a memorandum of law with supporting documents. Finally, the attorney prepares the client for the hearing.

According to a recent study by the Georgetown Center for International Migration, asylum seekers represented by counsel are six times more likely to be granted asylum than those without counsel.

Providing legal services to asylum clients is a life-changing experience. Natalie Spears of Chicago's Sonnenschein Nath & Rosenthal explains, "Representing an asylum seeker has been one of the most rewarding experiences in my legal career. By doing such work, I know I am making a difference in the life of an individual —many times saving that person's life."

Take Action!

Law firms like the one described in this article contribute pro bono (free) legal services to asylum seekers. Most, however, are not this fortunate and must return to the native country they have fled. Are there any circumstances under which you feel that asylum seekers should be furnished with free, government-funded legal counsel, paid for by American tax dollars? If so, describe and argue for such cases. (For sample cases, visit www.pbs.org/pov/wellfoundedfear)

Erratum

On page 19 of *Insights*'s Religious Freedom in America Edition (winter 2001), the photo of a Texas high-school student leading a prayer appears by permission of the *Austin American-Statesman*.

Adapted from Mary Meg McCarthy, "Asylum May Be A Matter of Life and Death," ABA Journal *(Dec. 2000): 63.*

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The Next Gideon?

by Siobhan Morrissey

In 1999, a boat loaded with Cuban refugees capsized, and many lost their lives, including the divorced mother of 6-year-old Elian Gonzalez. Elian himself was rescued and placed in the Miami home of relatives, who sought to keep him in the United States. His father, however, wanted him returned to Cuba. A legal battle ensued. Although the U.S. Supreme Court refused to hear the Elian Gonzalez case, and the 6-year-old boy returned to Cuba with his father in June 2000, some children's rights advocates believe the case ultimately may help their cause.

Why? These advocates think the case may lead to landmark law requiring free legal advice for juvenile refugees in the way *Gideon v. Wainwright* gave defendants the right to an attorney.

Coincidentally, both the Elian and Gideon cases originated in Florida. Clarence Earl Gideon was a four-time felon accused of burglarizing a Panama City poolroom. Gideon argued that anyone facing incarceration should be entitled to legal representation—even if he cannot afford to pay. The Supreme Court's agreement in 1962 was immortalized in the book *Gideon's Trumpet*.

Now some legal experts herald the Elian case as the *Gideon's Trumpet* for refugee children lacking the money and wherewithal to hire legal representation. Children's rights advocates maintain the state also should provide free legal aid to juvenile refugees, given the complexity of immigration law and the ages of the children affected.

Although Elian's relatives lost their bid to keep him in the United States, legal experts say the ultimate beneficiaries may be those who come after him.

"We will know more about their unique problems when they come to this country alone," said Bernard Perlmutter, director of the University of Miami's Children and Youth Clinic. "Maybe the publicity alone will be good for this cause."

Perlmutter maintains the High Court refused to hear Elian's case because the justices did not wish to second-guess executive decisions on immigration matters. By refusing to address the issue, the Supreme Court reinforced the unfettered discretion accorded the INS, Perlmutter says. Although the case created no new law, it did expand the discretion the INS enjoys, he says.

Attorneys for Elian claimed his right to freedom conflicted with his father's rights as a parent. They argued the INS should have heard Elian's asylum claim before deciding to send him back to Cuba. They said that the court could order an asylum hearing irrespective of his father's wishes since neither Congress nor the INS puts age restrictions on an alien's right to asylum.

"We are very concerned that the results of this case would be harmful to children who need more protection, not less," says attorney Kendall Coffey, who championed Elian's asylum case.

More than a dozen attorneys represented Elian's Miami family, but most refugee minors are not so lucky, Perlmutter says.

In 1999, about 5,000 unaccompanied children sought asylum in the United States, he says, explaining that there were "many instances where they had no access to interpreters or counsel."

Some of these children fled the horrors of their homelands: bonded labor, female genital mutilation, child prostitution, and conscription into the military as child soldiers.

Last year, 1,200 children voluntarily agreed to deportation from the United States, largely because many of them did not understand their legal options, Perlmutter says. "They may well be children who have bona fide claims to asylum," he says.

The UN High Commission on Refugees estimates children compose more than half the world's refugee population—roughly 20 million minors. Those who make it to the United States often don't comprehend the legal process and have difficulty being heard, says Wendy Young, director of government relations with the Women's Commission for Refugee Women and Children, a New York City-based nonprofit organization.

Adapted from Siobhan Morrissey, "The Next Gideon?" ABA Journal *(Aug. 2000): 26–27.*

Not all children merit asylum, Young concedes. However, all minors should be appointed an attorney to shepherd their cases, as is already done in Britain, she adds.

Young launched a pilot program in Arizona based on the British model. While she hopes to expand the project nationwide, Young recognizes she may face opposition from a growing anti-immigration movement and people who oppose spending tax dollars on noncitizens. She estimated expanding the program nationwide would cost less than $10 million a year.

Other lawyers also worry over the aftermath of Elian. "We are very concerned that this case could set a very dangerous precedent and give the INS even more discretion than Congress intended," says Cheryl Little, an attorney with the Miami-based Florida Immigrant Advocacy Center.

The center joined the women's commission and the Lawyers Committee for Human Rights, which is headquarters in New York City, in submitting an amiss brief in the Elian case.

The brief referred to the Refugee Act of 1980, in which Congress stated any alien physically present in the United States may apply for asylum, and added, "Congress has never deprived children of the right to seek asylum."

The three groups also expressed a fear that giving the INS too much discretion erodes or even eliminates a "child's right to apply for asylum in cases where a child may have an independent claim for protection, despite objections from a parent."

More important, the government's position appears to conflict with the INS's Guidelines for Children's Asylum Claims, which the women's commission helped draft. The INS issued its guidelines on December 10, 1998, the fiftieth anniversary of the Universal Declaration of Human Rights. Those guidelines, state the brief, "clearly confirm the INS's understanding that children have a right to apply for asylum."

"It speaks in words that would be understood on *Sesame Street*," says attorney Coffey. "Yet, this case holds out the risk that some or all of that well-thought-out approach to children will be undone."

Each year, several thousand unaccompanied children illegally enter the United States seeking asylum.

1. Take a survey. Would people be willing to spend tax dollars to help juvenile asylum seekers? Why or why not?

2. Do you think a child Elian's age should be able to ask for asylum? If not, how old do you think a child must be to seek asylum? Explain your answer.

Learning Gateways Activities

by Margaret Fisher

See Strategies Here

This teaching strategy introduces students to the reality of today's immigration practices and policies. Follow up with additional immigration strategies prepared by Margaret Fisher at insightsmagazine.org And don't miss the student materials on related immigration topics starting on page 16.

Overview of the Lesson

Objectives

As a result of this lesson, students will

- Describe data on immigration
- Research history of immigration
- Explore policies and personal opinions on immigration

Target Group: High School

Time Needed: 2–3 classes

Materials Needed: Copy of the Nugent and Martin & Martin articles on pages 4–6 and 10–12; copies of Student Handout. Prior to class, prepare

- 30 half-sheets of paper of the same color with words: "2000 Tourists, Business Visitors, Students, and Foreign Workers"
- 1.25 half-sheet of a different color: "2000 Immigrants and Refugees"
- 2.5 half-sheets of a third color: "2000 Undocumented Workers"

Procedures

1. Before your presentation, review the Nugent article for immigrant categories and the Martin article for totals.
2. Tell students that today is a typical day at U.S. airports and borders. The sheets of paper you will give them represent the numbers of noncitizens who come to the United States every day. Distribute the sheets to all students fairly evenly. As you explain each category, have students tape their sheets to the board and determine the totals. Remove two of the half-sheets of the 2,000 undocumented workers and explain that 4,000 are arrested each day, while about 1,000 successfully enter the country.
3. Explain that the first immigrants to North America came 25,000 years ago from Asia. We call them Indians. About the time Columbus came to the Western Hemisphere, there were about 25 million Indians in North America.
4. In groups, have students identify one ethnic group and prepare a visual display of its history of immigration to the United States. Students at a minimum should explain when the migration of that ethnic group began and when the largest numbers of that ethnic group arrived, what were the forces that promoted the migration, whether or not U.S. laws were open to the immigrants or were restrictive, and the present numbers of that ethnic group that immigrate to the United States annually. Students can begin with the U.S. Immigration and Naturalization Service at www.ins.usdoj.gov
5. Explain that the United States is inconsistent in its attitude toward immigration. At times, it extends a warm welcome; and at others, it actively discourages immigration. Draw a continuum on the board or overhead and write "no immigration" at one end and "no borders" at the other end.
6. Tell students that you are going to pass out a list of policy positions. In pairs, students should place each policy using its letter on the continuum. Students will compare and discuss their continuums.
7. Ask students to place themselves on the continuum and discuss their positions and that of the class as a whole.
8. Discuss how the U.S. Supreme Court can review policies and uphold or set them aside. Explain that the Supreme Court is now reviewing the policy of detaining indefinitely deportable immigrants who cannot return to their home country. The cases—*Zadvydas v. Underdown* and *Ma v. Reno*—respectively involve a European born in a displaced persons camp in Germany who was sentenced for a drug offense, and a Cambodian who served time in the United States for manslaughter. Visit insightsmagazine.org (click "Supreme Court Roundup") to find Web sites where students can conduct research into these cases.

An attorney/educator with many years' experience in teaching law to the public, Margaret Fisher is an adjunct law professor at Seattle University School of Law, and she also assists the state courts of Washington with educational programs.

Immigration Policy

1. Review the policy positions described below and place the letter of each policy on the continuum. The first one is done for you.

2. Where would you place your own views on immigration, and why?

3. Americans disagree on whether public funds should support the education of undocumented aliens' children. What point of view does the cartoonist seem to be supporting? Explain why you agree or disagree.

Illustration© by Tony Griffi

No Immigration
No Borders

<——(a)——————————————————————————————>

a. There should be a five-year stop to immigration so that the Americans and recent arrivals can get adjusted to each other.

b. Everyone should be able to come and go as they wish without restriction.

c. The United States should allow high levels of immigration for skilled workers.

d. To implement regional and international trade agreements, the United States should permit freer movement of individuals engaged in trade.

e. The United States should provide humanitarian aid to countries that persecute individuals so that the refugees can return home rather than provide asylum to refugees in other countries.

f. U.S. citizens should be allowed to be citizens of two countries at the same time.

g. For environmental reasons, the United States should reduce the numbers of immigrants.

h. The United States should increase the number of border patrols.

Teaching Standards for This Issue

Teachers of civics, government, history, and law all over the country are working toward attaining the educational standards set forth by their local communities. To assist in this effort, each edition of *Insights on Law & Society* is designed to support national standards of major educational organizations such as the National Council for the Social Studies, the Center for Civic Education, the National Center for History in the Schools, and the American Library Association. To see the national standards supported by *Insights*'s Immigration Law & the American Dream edition, visit insightsmagazine.org (click "Learning Gateways").

Immigration Law in the American Dream

Supreme Court Roundup

by Charles F. Williams

End of the 2000–2001 Term

Summer is approaching and, with it, the end of the 2000–2001 term in June. Some of the most widely anticipated Supreme Court decisions can be seen either as involving the balance of power between state and federal governments or as challenging the constitutionality of existing laws under the First or Fourth Amendments. Read here about key cases from this term involving federalism and the First Amendment; see "Teaching with the News" for coverage of Fourth Amendment cases.

Federalism

Federalism—the constitutional principle that state governments retain some significant lawmaking power with which the federal government may not interfere—has always been a source of political and legal tension. For much of the 20th century, the federal government successfully asserted its authority to regulate in areas where some states would have preferred to regulate on their own. But recently a closely divided Supreme Court has tended to rule on the side of protecting state prerogatives.

***Solid Waste Agency v. Army Corps of Engineers*, No. 99-1178**
(Argued Oct. 31, 2000)
Issue: Federal Protection of Wetlands
Case: The issue in *Solid Waste Agency v. Army Corps of Engineers* was of keen interest to those on both sides of the federalism debate. The fundamental question before the Court was whether —and under what circumstances— the Army Corps of Engineers could assert jurisdiction over isolated intrastate waters (that is, small lakes or ponds that do not extend into more than one state).

In this case, the Solid Waste Agency purchased a former sand and gravel strip-mining site in Cook County, Ill. It planned to use it as a balefill to hold baled and compacted trash, and it proceeded to obtain approval from the state of Illinois. But while the state thought Solid Waste's plan would make good use of the abandoned strip mine, the U.S. Army Corps of Engineers, a federal agency, objected that it had jurisdiction over this isolated wetland and said it would not permit the balefill.

The Corps said the balefill could destroy the habitat of some migratory birds, which would in turn "substantially affect" interstate commerce because millions of people annually spend millions of dollars hunting, trapping, and observing migratory birds and many of these people "cross state lines."

But did the federal agency have authority over this Illinois site? The Corps said it did and cited the Constitution's commerce clause (Art. 1, § 8), which provides that "Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

Under that clause, Congress enacted the Clean Water Act and asserted jurisdiction over "navigable waters"—defined broadly as "waters of the United States." The Corps in turn issued regulations interpreting "waters of the United States" as including all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce. A preamble to the regulations included the "Migratory Bird Rule," which stated that the Corps will also assert jurisdiction over any waters that are used or would be used by migratory birds as habitat.

The Decision: On Jan. 9, 2001, the Supreme Court ruled 5-4 in favor of the Solid Waste Agency and against the Corps, reasoning that "permitting [the Corps] to claim federal jurisdiction over ponds and mud flats falling within the 'Migratory Bird Rule' would result in a significant impingement of the States' traditional and primary power over land and water use."

***Cook v. Gralike*, No. 99-929**
(Argued Nov. 6, 2000)
Issue: Term Limits
Case: *Term limits* involve limiting the number of terms legislators may hold office. Missouri term-limit supporters came up with what Drake University Law Professor Tom Baker has described as a catch-22 to pressure Congress into approving a federal constitutional amendment limiting how many terms its members could serve. The supporters amended the Missouri State Constitution to require the state's federal congressional delegation to decide between pushing Congress to approve a federal constitutional amendment or risk being labeled

Charles F. Williams is editor of PREVIEW of U.S. Supreme Court Cases, *a publication of the ABA Division for Public Education in Chicago.*

on their election ballots as candidates who had failed to support term limits.
Decision: A unanimous Supreme Court said the state had gone too far, with Justice Kennedy concluding that a state "simply lacks the power to impose any conditions on the election of [federal] senators and representatives, save the neutral provisions as to the time, place and manner of elections."

***Alexander v. Sandoval*, No. 99-1908 (Argued Jan. 16, 2001)**
Issue: "English Only" Laws
Case: Alabama offers its written driver's license exams in English only. The plaintiffs in this case successfully challenged the state policy in a class-action lawsuit on the ground that the English-only requirement had a discriminatory impact on foreign-born drivers. The Eleventh Circuit sided with the plaintiffs and said the law has the effect of discriminating on the basis of race or national origin. Before the Supreme Court, Alabama argued, among other things, that the states' sovereign immunity should protect them from suits brought by private citizens wishing to allege that a state agency has administered a federal grant in a discriminatory manner.
Decision: On April 24, the Court sided with the state, voting 5-4 that private individuals may not sue to enforce these so-called "disparate-impact" regulations promulgated under Title VI of the Civil Rights Act of 1964.

***Alabama v. Garrett* (No. 99-1240) (Argued Oct. 11, 2000)**
Issue: Americans with Disabilities Act
Case: When Alabama was sued by private citizens under the Americans with Disabilities Act, it argued that portions of the ADA exceeded Congress's enforcement authority under section 5 of the Fourteenth Amendment. Section 5 provides that Congress "shall have the power to enforce, by appropriate legislation, the provisions of this article" (that is, due process and equal protection).
Decision: By a narrow 5-4 vote, the Supreme Court once again came down on the side of the states. "States are not required by the Fourteenth Amendment to make special accommodations for the disabled, so long as their actions towards such individuals are rational," wrote Chief Justice Rehnquist.

First Amendment

The Court continued to wrestle with free speech issues this term, squeezing two more commercial speech cases into the last days of oral arguments in April.

***Lorillard Tobacco Co. v. Reilly* (00-596) and *Altadis U.S.A., Inc. v. Reilly* (00-597) (consol.) (Argued April 25)**
Issue: Tobacco Advertising Restrictions
Case: The Supreme Court has previously held that commercial speech—which advertises a product or service for profit—is entitled to some protection under the First Amendment, but not so much as noncommercial speech. In this case, the Massachusetts Attorney General issued regulations that (1) banned most outside tobacco advertising within 1,000 feet of elementary or secondary schools, public playgrounds, or public parks with a playground by permitting only so-called "tombstone" signs —black and white signs that merely state "Tobacco products sold here"; (2) required warning labels on cigar packaging; and (3) required that all in-store tobacco advertising be placed at least 5 feet high (so as not to be in children's direct line of vision).

The tobacco companies are now asking the Supreme Court to strike down these restrictions, contending not only that they are "preempted" by the Federal Cigarette Labeling and Advertising Act, but also that they violate the companies' free speech rights. The companies argue that the restrictions are actually content based because, for example, they prohibit outdoor ads that promote tobacco products yet allow ads that discourage tobacco use.

***United States and Department of Agriculture v. United Foods*, Inc. (No. 00-276) (Argued April 17, 2001)**
Issue: Compelled Commercial Speech
Case: This case asks whether the assessments imposed under federal law on members of the mushroom industry for advertising programs designed to support the industry violate the First Amendment. United Foods has refused to pay the assessments, arguing that they are a form of unconstitutional compelled speech. It believes the advertising program helps its competitors more than itself and that it shouldn't be forced to subsidize this speech. The government, however, contends that the federal law is merely an economic regulation that is undeserving of free-speech scrutiny.

Research Tool

For updates, more information, and additional resources about these and other Supreme Court cases, check out the *Insights* Web site (insightsmagazine.org) (click "Supreme Court Roundup").

News from Capitol Hill

Review of Issues Facing Congress

Two bills currently at issue would cut down on electronic junk mail and eliminate the estate tax in 2011. A third bill promises to reform how campaigns are financed; it has a history that goes back three years or more.

Putting a Lid on Spam (H.R. 718)

While legislation against spam—electronic junk mail—has died in past congressional sessions, at the very end of March, the House Committee on Energy and Commerce approved an anti-spam bill that the House could vote on soon. Named the Unsolicited Commercial Electronic Mail Act of 2001, H.R. 718 would allow individuals and Internet providers (such as America Online, Inc., and Microsoft) to sue spammers and require them to use valid return addresses.

Big Tax Fight Brews (H.R. 8)

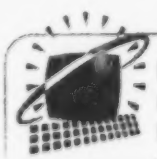
In general, when the President proposes his fiscal plan, members of both the Senate and the House vote along party lines; beforehand, however, each chamber often changes points in the budget. Republican President George W. Bush, who says his top legislative priorities are cutting taxes and improving education, recently presented his annual budget to Congress. This year, many Republicans as well as Democrats have been going back and forth deciding how to vote on parts of the President's tax plan.

In early April, the House voted to repeal the estate tax 274 to 154 (H.R. 8)—but not before rejecting an alternative bill by Democrats that proposed keeping a tax on the very largest estates. In the Senate meanwhile, a Republican swing voter could jeopardize the President's proposed budget.

The Dance of Legislation: Campaign Finance Reform (H.R. 380)

A day after the Senate approved its version of the campaign finance law (S. 27), some House sponsors started to push for passage of their version of the bill by Memorial Day, May 28. Others in the House want to keep H.R. 380 in committee to make changes; if they succeed, passage could take much longer. Often, it takes years for a bill to become law; the fight for passage of campaign finance legislation has been going on for years.

For example, the House passed H.R. 2356 in 1998 and H.R. 417 in 1999 (H.R. 417), but the Senate killed both bills in filibusters.



For a fuller listing and more details about bills already introduced in the 107th Congress, visit **insightsmagazine.org** (click "News from Capitol Hill").

Activity Ideas!

1. Assign a student to conduct a class review of the steps needed for a bill to become law, using the chalkboard or an overhead transparency. Students should be asked to define and discuss related terms such as *bipartisan*, *filibuster*, *committee*, *mark-up*, *draft*, and *sponsor*. How might these terms be used in the context of the ongoing campaign finance debate?

2. Have students list the primary political leaders involved in the campaign finance reform debate. To what political parties and areas of the country do they belong?

3. Have students research to discover how senators from their state voted on the campaign finance reform bill. What was the senators' reasoning? Have students debate campaign finance reform's merits and drawbacks based on this research and their own ideas.

See These Web Sites

1. To read more online about the history of campaign finance reform and to trace the history behind the efforts to reform how elections are funded, visit www.citizen.org/congress/reform/cfr_archives.htm

2. To read more about spam mail and efforts to outlaw it, visit www.spam.abuse.net

3. Find out more about any bill proposal before Congress at thomas.loc.gov; search by bill name or number.

Some House Bills from the 107th Congress

AIDS

H.R.684 (Millender-McDonald, D-Calif.) to authorize assistance for mother-to-child HIV/AIDS transmission prevention efforts.

Civil Rights/Discrimination

H.R.321 (Jackson, D-Ill.) to assure protection for the substantive due process rights of the innocent, by providing a temporary moratorium on carrying out the death penalty to assure that persons able to prove their innocence are not executed.

H.R.476 (Ros-Lehtinen, R-Fla.) to amend Title 18, U.S. Code, to prohibit taking minors across state lines in circumvention of laws requiring the involvement of parents in abortion decisions.

Election Law

H.R.263 (Davis, R-Va.) to establish an Election Administration Commission to study federal, state, and local voting procedures and election administration and provide grants to modernize voting procedures and election administration.

H.J. Res. 5 (Delahunt, D-Mass.) proposing an amendment to the Constitution of the United States to abolish the Electoral College and to provide for the direct popular election of the president and vice president of the United States.

H.R.561 (Dingell, D-Mich.) to establish the Bipartisan Commission on Election Reform to study and make recommendations on issues affecting the conduct and administration of elections in the United States.

Families/Children

H.R.265 (DeLauro, D-Conn.) to increase the availability and affordability of quality child care and early learning services, and to amend the Family and Medical Leave Act of 1993 to expand the scope of the Act.

H.R.866 (Bilirakis, R-Fla.) to prohibit the provision of financial assistance by the federal government to any person who is more than 60 days delinquent in the payment of any child support obligation.

Gun Violence

H.R.278 (Kennedy, D-R.I.) to assist state and local governments in conducting community gun buy-back programs.

H.R.534 (Crenshaw, R-Fla.) to establish a grant program that provides incentives for states to enact mandatory minimum sentences for certain firearm offenses.

Housing

H.R.425 (Nadler, D-N.Y.) to authorize the Secretary of Housing and Urban Development to make grants to states to supplement state assistance for the preservation of affordable housing for low-income families.

H.R.825 (Flake, R-Ariz.) to provide funds to schools that provide educational services to homeless children and youth.

Senator Hastings, D–Fla.

Immigration Law

H.R.505 (Hastings, D-Fla.) to amend the Immigration and Nationality Act to provide for the adjustment of status of certain unaccompanied alien children and the establishment of a panel of advisers to assist unaccompanied alien children in immigration proceedings.

H.R.957 (Keller, R-Fla.) to improve the prevention and punishment of criminal smuggling, transporting, and harboring of aliens.

Senator Keller, R–Fla.

Labor Law

H.R.961 (Lantos, D-Calif.) to amend the Fair Labor Standards Act of 1938 to reform the provisions relating to child labor.

Head of the House

Don't miss our special online feature about the speaker of the house; student activity idea included.

Immigration Law & the American Dream

Teaching with the News

by Wendy Bay Lewis and Charles F. Williams

What Does the Fourth Amendment Mean Today?

In many ways, the citizens of the new republic who adopted the Bill of Rights in 1791 lived in a world very different from ours—no electronics, no automobiles, and no telephones. Consider some of the Fourth Amendment issues facing the courts over the years and then decide whether you agree or disagree with the courts' decisions.

The Fourth Amendment was sparked by the American colonists' hatred of the *Writ of Assistance*, a search warrant that essentially authorized English customs officials to search whoever and whatever they wanted at any time and under any circumstances. The drafters of the Bill of Rights were determined to deny the new American government such unchecked powers, and therefore they provided that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." It was left to the courts to determine:

- Whether a particular governmental action amounted to either a "search" or "seizure" within the meaning of the Fourth Amendment
- If it did, whether that particular search or seizure was "reasonable"
- If it wasn't, what consequences should follow

For example, because by its terms the Bill of Rights only applied to the federal government, the Fourth Amendment was not at first construed to restrict searches and seizures conducted by state authorities.

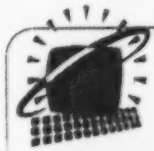
In a series of cases, however, the Supreme Court later determined that the Fourth Amendment (along with the vast majority of other rights contained in the first ten amendments) should be applied to state officials as well.

In addition, when the drafters forbid unreasonable searches of "persons, houses, papers, and effects," they could not have contemplated the advent of telephones, automobiles, air travel, e-mail, and cameras, much less the possibility of drug tests, wiretaps, and other electronic snooping devices. Thus, with each technological advance, the question has arisen as to whether the Fourth Amendment applied to the new circumstance (e.g., the Fourth Amendment specifies "houses" not "automobiles" and a person's "papers" not "hard drives.")

Moreover, the courts are faced with the task of determining whether a particular police activity actually constitutes a "search." Are the police conducting a "search" when they place an electronic bug on a public telephone booth that works by passively measuring the vibrations sounds create in the booth's glass? If a police officer stops a pedestrian in order to question him, has the pedestrian been "seized"? In either case, when is such intervention "unreasonable"?

The Fourth Amendment itself doesn't say. The courts have had to balance the importance of the government's interest in conducting the search or seizure in the name of the public welfare against the intrusion on the individual's expectation of privacy. Thus, when time permits, police generally must ask a neutral magistrate to issue a warrant specifically approving their planned search or seizure.

Finally, the Fourth Amendment nowhere specifies what should happen if a court determines that the police did violate it in a specific case. Over time, however, the Supreme Court developed the "exclusionary rule" to enforce the ban on unreasonable searches and seizures. Pursuant to this doctrine, any evidence that the police obtain as the result of infringing on a defendant's Fourth Amendment rights will be excluded, or "suppressed," and cannot be used by the government against the defendant in any judicial proceeding. In addition, under modern civil rights laws, the defendant may be able to bring a lawsuit demanding money damages to compensate him for the violation.



For the online text of this article, plus FAQs and useful links, visit

insightsmagazine.org

Wendy Bay Lewis, founder of CivicMind.com, is a lawyer and educator residing in Bozeman, Mont.

Charles F. Williams is editor of PREVIEW of U.S. Supreme Court Cases, *a publication of the ABA Division for Public Education in Chicago.*

Three Key Fourth Amendment Cases

Mapp v. Ohio, 367 U.S. 643 (1961) The exclusionary rule, barring the use of evidence seized in violation of the Fourth Amendment, applies to state as well as federal prosecutions.

Katz v. United States, 389 U.S. 347 (1967) The Fourth Amendment "protects people, not places"—therefore, it governs the use of electronic eavesdropping devices, and it does not matter whether the device is physically placed within any particular enclosure.

Terry v. Ohio, 392 U.S. 1 (1968) The Fourth Amendment does not require police to obtain a search warrant before stopping and "frisking" a suspect for weapons.

Current Cases

Atwater v. City of Lago Vista
(No. 99-1408) (Argued Dec. 5, 2000)
Issue: Custodial Arrest for Seat Belt Violations
Case: Gail Atwater was handcuffed and taken into custody by a Lago Vista, Tex., police officer who observed her driving without a seat belt; her two young children also were not wearing seat belts. The maximum penalty for violating the Texas seat belt law is a $50 fine. The Supreme Court was asked to decide whether the Fourth Amendment prohibits the police from making a custodial arrest of a person for an offense that carries only a fine upon conviction.
Decision: In a 5-4 vote on April 24, the Court held that the Fourth Amendment doesn't prohibit the custodial arrest made by the Lago Vista police officer.

City of Indianapolis v. Edmond
(No. 99-1030) (Argued Oct. 3, 2000)
Issue: Drug Checkpoints
Case: Since 1967, the Supreme Court has upheld a number of searches and seizures despite the absence of individualized probable cause or reasonable suspicion. Two of these instances involved the use of roadblocks to check for the presence of illegal aliens or for signs of impaired driving.
Decision: In this case, the Court held that drug checkpoints violate the Fourth Amendment because their primary purpose is indistinguishable from the governmental general interest in crime control.

Ferguson v. City of Charleston
(No. 99-936) (Argued Oct. 4, 2000)
Issue: Warrantless Drug Testing of Pregnant Women
Case: This case involved a Fourth Amendment challenge to a drug-testing policy implemented at a South Carolina public hospital. Under the policy, pregnant women were tested—without warrants or probable cause—for cocaine use. Positive test results were shared with law-enforcement officials, and some women were arrested and threatened with prosecution if they did not complete drug treatment.
Decision: The Court held that these drug tests were unconstitutional searches.

Kyllo v. United States
(No. 99-8508) (Argued Feb. 20, 2001)
Issue: Thermal Imaging Scans
Case: A thermal imager is a cameralike device that records and depicts infrared radiation so as to display escaping heat. In this case, the police used a thermal imager to help develop probable cause to believe that marijuana was being grown inside a home. The question for the Court is whether that scan was an unreasonable search and seizure under the Fourth Amendment.

Activity Ideas!

1. Writing position papers. After the Supreme Court approved random drug tests for student-athletes, some school districts started requiring all students involved in extracurricular activities to consent to random drug testing. Ask students to write a short position paper on whether students' Fourth Amendment rights would be violated if all students were randomly tested for drugs. Would a mandatory drug test violate their expectation of privacy or protect them from students who use drugs? If students are tested, should the evidence be admissible against them in court or used only for disciplinary action by school officials?

2. Listening to Supreme Court arguments. The arguments in two U.S. Supreme Court cases that concern students' Fourth Amendment rights are available on the Internet. Listen to the lawyers' arguments and the questions posed by several Supreme Court Justices in *New Jersey v. T.L.O.* and *Vernonia School District v. Acton* at oyez.northwestern.edu What issues troubled the Justices even though they held the searches were reasonable?

3. Police vs. privacy debate. Suppose a police officer peeked through a window at a private residence, saw several people packaging drugs, and arrested them without first obtaining a warrant. Would the police action violate the Fourth Amendment (so that the evidence would be inadmissible at trial)? If the people arrested were actually guests, not homeowners, do you think they might have a reasonable expectation of privacy? To help inform your opinion, listen to the debate "Peeping-Tom Cops" at justicetalking.asc.upenn.edu (click "Show Archive").

Immigration Law & the American Dream

Media Specialist's Corner

—Mary Kayaian, Consultant

Here's a Useful Tool ...

We hope you will find this column useful whether you are a student conducting research on the issue's theme, a teacher preparing a lesson, or a library media specialist assisting students or teachers in tracking down additional resources for their course work. As a library media specialist, you might also find the column helpful as a selection tool for collection development purposes. In each print edition, we include annotated Web sites containing primary documents students may need to locate and annotated book lists that relate to the issue's topic. Online features include full bibliographic information and selected reviews for book list entries as well as links to Web sites offering additional research and instructional support. Your feedback is always appreciated.

Primary Documents for Students

U.S. Code of Federal Regulations; www4.law.cornell.edu/uscode

Contains a consolidation and codification of the general and permanent laws arranged according to subject matter under fifty title headings largely in alphabetical order. Sets out the current status of the laws, as amended by Congress, without repeating all the language of the amendatory acts except where necessary. Purpose is to present the laws in a concise and usable form.

Title 8: Aliens and Nationality; www4.law.cornell.edu/uscode/8/index.html

Chapter 12: Immigration and Nationality; www4.law.cornell.edu/uscode/8/ch12.html

Chapter 13: Immigration and Naturalization Service; www4.law.cornell.edu/uscode/8/ch13.html

Title 18, Part I, Chapter 69: Nationality and Citizenship (in the context of crimes); www4.law.cornell.edu/uscode/18/ch69.html

U.S. Constitution: Article 1, Section 8; www.law.cornell.edu/constitution/constitution.article1.html

Outlines the power of Congress to establish uniform naturalization rules.

U.S. Immigration Act of 1990; www.ins.usdoj.gov/cgi-bin/foliolsa.dll/plaw.nfo/query={jump!3A'27pl101649!27'}/doc/{@2682}?

The Immigration and Nationality Act has been amended many times. When Congress enacts a law, it generally does not rewrite the entire body of law, or even entire sections of a law, but instead adds to or changes specific words within a section which are then reflected within the larger body of law. The Immigration Act of 1990 is one of many public laws that have amended the INA.

U.S. Immigration and Nationality Act (INA); www.ins.usdoj.gov/graphics/lawsregs/ina.htm

Before the INA was created in 1952, a variety of statutes governed immigration law, but they were not organized in one location. The McCarran-Walter bill of 1952, Public Law No. 82-414, collected and codified many existing provisions and reorganized immigration law's structure. The act has been amended many times over the years but is still the basic body of immigration law.

U.S. Supreme Court Decisions on Immigration; for recent decisions, see www4.law.cornell.edu/cgi-bin/empower?DB=SupctSyllabi&TOPDOC=0&QUERY00=immigration+or+INS&PROP00=tsb

Books

Note: For full bibliographic information for each title, visit insightsmagazine.org

Bach, Robert L. *Becoming American, Seeking Justice: The Immigrants' Legal Needs Study. Funded by the Ford Foundation.*

Examines the social problems and legal needs of low-income immigrants in Los Angeles, Houston, Miami, Chicago, and New York.

Baker, Susan Gonzalez. *The Cautious Welcome: The Legalization Programs of the Immigration Reform and Control Act: Program for Research on Immigration Policy.*

Chronicles the design, implementation, and outcomes of the legalization provisions of the Immigration Reform and Control Act of 1986.

Calavita, Kitty. *Inside the State: The Bracero Program, Immigration, and the INS after the Law.*

Traces the contradictory economic and political forces confronting the Immigration Service and the bureaucratic dilemmas they posed in the implementation of the Bracero program.

Cozic, Charles P., ed. *Illegal Immigration: Opposing Viewpoints. Opposing Viewpoints Series (unnumbered).*

Presents a series of articles debating issues relating to illegal immigration and American immigration law and policy.

Fix, Michael, and Jeffrey Passel. *Immigration and Immigrants: Setting the Record Straight.*

Addresses the policy context, who the country's immigrants are and where they live, the impact of immigrants on the U.S. labor market, and the public sector costs of immigrants compared with their tax payments.

Jacobson, David. *Right Across Borders: Immigration and the Decline of Citizenship. Reprint edition.*

Discusses how transitional migrations have affected our ideas of citizenship and the state since World War II, showing how citizenship has been increasingly devalued as governments extend rights to foreign populations and how, in turn, international human rights law has becoming increasingly important.

Konvitz, Milton Ridvas. *Civil Rights in Immigration.*

Discusses civil rights in the context of emigration and immigration law.

Lemay, Michael C. *Anatomy of a Public Policy: The Reform of Contemporary American Immigration Law.*

Offers insight into the role played by interest groups and political leadership on current immigration policy.

McClain, Charles, ed. "Chinese Immigrants and American Law." *Asian Americans and the Law.* Vol. 1.

Examines the law's impact on the Chinese immigrant community and their response to racial discrimination.

Salyer, Lucy E. "Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law." *Studies in Legal History.*

Explores the social and legal history of restrictive immigration policies and their enforcement in the United States between 1891 and 1924.

Mary Kayaian is the Library Media Center director/technology coordinator at the Jane Stenson School in Skokie, Ill.

Schuck, Peter H. "Citizens, Strangers, and In-Betweens: Essays on Immigration and Citizenship." ***New Perspectives on Law Culture, and Society.***

An integrated series of fourteen essays analyzing the complex social forces unleashed by unprecedented legal and illegal migration to the United States.

Schwartz, Warren F., and Warren A. Schwartz, eds. ***Justice in Immigration.*** **Cambridge Studies in Philosophy and Law.**

A study of the fundamental normative issues underpinning immigration policy. Includes the proper role of the state in supporting a particular culture, the possible destabilization of the political and social life of a country through immigration, the size and distribution of economic losses and gains, and the legitimacy of discriminating against potential immigrants in favor of members of the resident population.

Useful Web Sites

American Immigration Lawyers Association: www.aila.org

American Immigration Resources on the Internet: www.wave.net/upg/immigration/resource.html

Come online to link to professional book reviews and excellent online resources for librarians, students, and teachers looking for additional support on the topic of immigration law.

Amnesty International: www.amnesty.org

Center for Immigration Studies: www.cis.org

Federation for American Immigration Reform: www.fairus.org

Human Rights Watch: www.hrw.org

"Justice Talking: Secrets or Lies: Immigrants, Terrorism, and International Justice"; justicetalking.asc.upenn.edu/shows/Secrets_or_Lies_Immigrants__Terrorism_and_International_Justice_06_15_2000.asp
A weekly one-hour radio program that takes an in-depth look at the cases and controversies that come before the nation's courts; hosted by NPR's Margot Adler and created by Annenberg Public Policy Center at the University of Pennsylvania.

P.O.V.: *Well-Founded Fear*: www.pbs.org/pov/wellfoundedfear. Explores the political asylum process.

ThinkQuest Library:
From One Life to Another: The History of European Immigration: library.thinkquest.org/26786

Immigration: The Living Mosaic of People, Culture, and Hope: library.thinkquest.org/20619

U.N. High Commissioner for Refugees: www.unhcr.ch

U.S. Immigration and Naturalization Service: www.ins.usdoj.gov/graphics/index.htm

Lessons and Online Activities

"Exploring Cultural Rituals" by Nanci Douglas and Mary Ruddy. The Library of Congress American Memory Fellows Program: learning.loc.gov/ammem/ndlpedu/lessons/99/ritual/intro.html

"Immigrants: The Irish Experience in Boston 1840 and the Immigrants' Experience Today." Educational Units and Lessons Plans: www.coollessons.org/Imm20.htm

"Immigration to America." Plainfield High School, Plainfield, Ind.: www.plainfield.k12.in.us/hschool/webq/webq10/migrate.html

"Irish Immigrant Families in Mid-Late 19th Century America" by Mary Baba. Yale-New Haven Teachers Institute: www.cis.yale.edu/ynhti/curriculum/units/1990/5/90.05.07.x.html

"The Japanese American Experience" by Alejandro Echevarria. Rampart High School, Colorado Springs, Colo.: www.smith.edu/fccea/curriculum/echev.htm

"Learning about Immigration through Oral History" by Barbara Wysocki and Frances Jacobson. The Library of Congress American Memory Fellows Program: learning.loc.gov/ammem/ndlpedu/lessons/97/oh1/ammem.html

University of Minnesota Immigration History Research Center: Immigration History and Ethnicity Lesson Plans: www1.umn.edu/ihrc/lessons.htm

Compiled by Michelle Parrini and Jennifer Kittlaus.

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sibility for immigration matters to states and localities. Because of concerns about the capacity of local law enforcement to enforce immigration laws in a balanced way (as witnessed, on the one hand, by videotapes of Riverside County police beating fleeing unauthorized migrants and, on the other hand, the refusal of New York City police to cooperate with INS in identifying illegal aliens), it is likely that this issue will continue to be a source of controversy.

Relations with Source Countries

Because immigration results from a complex array of factors, some originating in the source country and others in the receiving country, cooperation to address the causes and consequences of migration is essential.

The U.S. approach, as exemplified in NAFTA, emphasizes trade, not aid. The underlying assumption is that trade and investment will eventually reduce migration pressures, and hence unauthorized migration, by increasing economic opportunities and income levels in neighboring countries. To a large degree, the question is how to manage migration during the transition period so it does not become an irritant in bilateral or regional relations.

Conclusion

As this review has shown, making durable immigration policies is difficult because immigration involves trade-offs between competing rights or goods, but immigration debates are often conducted in starkly absolute terms. Positions are characterized as pro-immigration or anti-immigration with little consideration to nuance.

Immigration is an integral part of U.S. history and culture. Even with concerns about today's immigrants, most Americans would agree that immigration overall has been in the national interest of the United States. The U.S. debate tends to be about how many and which immigrants, not whether to have immigration.

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June 11 Is Deadline for Law Day Awards Entries

Every year, the ABA honors outstanding Law Day events that have expanded the public's understanding of the rule of law and its appreciation for the positive role law plays in our democracy. The entry deadline for the Law Day Activity Awards and Judge Edward R. Finch Speech Awards for this year is June 11. To learn more about the awards and to obtain entry forms, visit www.abanet.org/publiced/lawday (click "Awards & Contests").

Online Resources for Teachers and Students

To learn strategies for protecting yourself when conducting online transactions, visit the ABA at www.safeshopping.org. Another part of the site—www.abanet.org/publiced/home—has additional consumer information on law and the computer, as well as on many other practical law topics (click "Practical Law").

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